

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL W. BRISENO,
Petitioner,

No. C 04-1458 PJH

**ORDER GRANTING IN PART
AND DENYING IN PART
CERTIFICATE OF**

APPEALABILITY

v.

JEANNE S. WOODFORD, Director,
California Dept. of Corrections,

Respondent.

This is a habeas case under 28 U.S.C. § 2254 filed by a state prisoner. On September 17, 2007, this court denied Briseno's petition on the merits. Before the court is Briseno's notice of appeal, which this court also construes as a request for a certificate of appealability ("COA").

To obtain a COA, Briseno must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward. "The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Section 2253(c)(3) requires a court granting a COA to indicate which issues satisfy the COA standard.

Here, the court finds that one of the four issues presented by Briseno in his petition meet the above standard and accordingly GRANTS the COA as to that issue only. See

1 generally *Miller-El v. Cockrell*, 537 U.S. 322 (2003). That issue is whether Briseno
2 was denied effective assistance of counsel in violation of his Sixth Amendment rights when
3 his trial counsel failed to obtain a certificate of probable cause from the trial court, thus
4 precluding him from appealing certain issues.

5 Accordingly, the clerk shall forward the file, including a copy of this order, to the
6 Court of Appeals. See Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270
7 (9th Cir. 1997).

8 **IT IS SO ORDERED.**

9 Dated: October 22, 2007



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PHYLLIS J. HAMILTON
United States District Judge